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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,128	12/04/2003	Robert B. Nilsen	043927-004054USPT	7639
26774 7590 09/08/2009 NIXON PEABODY LLP - PATENT GROUP 1100 CLINTON SQUARE ROCHESTER, NY 14604				
EXAMINER				
SEFER, AHMED N				
ART UNIT		PAPER NUMBER		
2893				
MAIL DATE		DELIVERY MODE		
09/08/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/728,128

Applicant(s)

NILSEN ET AL.

Examiner

AHMED SEFER

Art Unit

2893

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4, 9-13, 24, 26 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-13, 24, 26 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date 6/22/09
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 6/22/09 has been entered.

***Allowable Subject Matter***

2. The indicated allowability of claims 1 is withdrawn in view of the newly discovered reference(s) to Gale et al. ("Gale") US PG-Pub 2002/0191286. Rejections based on the newly cited reference(s) follow. Note that when Applicant files a continuation-in-part whose claims are not supported by the parent application, the effective filing date is the filing date of the child CIP. Since claims 1-4, 9-13, 24, 26 and 27 are not supported by the parent application, the effective filing date of this Child CIP is 12/4/2003. See MPEP 2133.01

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-4, 10-12, 26 and 27 are rejected under 35 U.S.C. 102(c) as being anticipated by Gale.

Gale discloses an optical polarizer film comprising a substrate (par. 17) having a subwavelength moth-eye structure (par. 3) including peaks and valleys and an intermittent surface (e.g. the slope-evaporated metal shown in figs. 1b and 1c) covering at least a portion of the substrate and providing polarization.

Re claim 2, Gale discloses the intermittent surface being a light-transmissive inhibiting surface covering at least some of the valleys.

Re claim 3, Gale discloses a substantially transparent coating disposed on the polarizer film (par. 21).

Re claim 4, the specification contains no disclosure of either the critical nature of the claimed arrangement or any unexpected results arising therefrom. Where patentability is said to be based upon particular chosen dimensions or upon another variable recited in a claim, the applicant must show that the chosen dimensions are critical. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990).

Re claim 10, Gale discloses a conductive coating (par. 32) disposed on the intermittent light-transmissive inhibiting blocking surface in at least some of the valleys.

Re claim 11, Gale discloses the intermittent surface being a light-transmissive inhibiting surface covering at least some of the peaks (fig. 1c).

Re claim 12, Gale discloses a substantially transparent coating disposed on the polarizer film (par. 21).

Re claim 26, Gale discloses an opaque (e.g. the slope-evaporated metal shown in figs. 1b and 1c) light-blocking filler disposed in at least some of the valleys.

Note that the word filler has been given their plain meaning as applicant has not provided a clear definition in the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); Chef America, Inc. v. Lamb- Weston, Inc., 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004).

Re claim 27, Gale discloses a substantially transparent coating disposed on the polarizer film (par. 21).

6. Claim 9 is rejected under 35 U.S.C. 102(e) as being anticipated by Gale.

Gale discloses a polarizer comprising at least one subwavelength optical microstructure (par. 3) including an undulating surface (figs. 1b and 1c) that includes an intermittent light-transmissive inhibiting (e.g. the slope-evaporated metal shown in figs. 1b and 1c) surface in at least some low areas of the microstructure.

7. Claim 13 is rejected under 35 U.S.C. 102(e) as being anticipated by Gale.

Gale discloses a polarizer comprising at least one subwavelength optical microstructure (par. 3) including an undulating surface that includes an intermittent light-transmissive inhibiting surface in at least some raised areas of the microstructure (figs. 1b and 1c).

8. Claim 24 is rejected under 35 U.S.C. 102(e) as being anticipated by Gale.

Gale discloses a polarizer comprising at least one subwavelength optical microstructure (par. 3) including an undulating surface that includes an intermittent light-transmissive surface (e.g. the slope-evaporated metal shown in figs. 1b and 1c) disposed in at least some low areas of the microstructure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to A. Sefer telephone number is (571)272-1921.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Davienne Monbleau can be reached on (571) 272-1945.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. Sefer/  
*Primary Examiner*  
*Art Unit 2893*